

**MISSOURI ASSOCIATION OF PROSECUTING ATTORNEYS
POSITION PAPER
SENATE BILL 37**

Executive Summary

The Missouri Association of Prosecuting Attorneys (MAPA) has reviewed SB 37 which includes proposed changes to Missouri's Public Defender system. Many of the changes made by SB 37 threaten to have a significant detrimental impact on the criminal justice system. The changes purported to be made by this bill as it relates to a maximum caseload standard and the process for dealing with defendants who exceed that standard are premature. A credible, independent, comprehensive study of the criminal justice system has been commissioned by the Missouri Bar and a final report is expected to be released late summer or early fall of 2009. As ministers of justice, MAPA urges Governor Jay Nixon to veto this bill.

The Missouri State Public Defender system states it is in the midst of a caseload crisis. It has relied upon statistics which purport to show a critical shortage of attorneys available to ethically handle the number of cases to which the Public Defender is appointed each year. In 2005 the Missouri Bar formed a task force on the issue and commissioned a study by The Spangenberg Group, which issued an assessment of the Public Defender system. The Missouri Senate also commissioned an interim committee to examine the claims. Both studies used numbers that were provided by the Public Defender. Those numbers have now been acknowledged by everyone to hugely overstate the percentages of cases the Public Defender system handles. The acknowledged flaw in both studies was comparing "opened" cases in the Public Defender system to "filed" cases in the State Court Administrator's system, resulting in literally thousands of cases being counted more than once within the Public Defender system. In order to address this discrepancy and others, the Missouri Bar has commissioned the independent study mentioned earlier, whose mission is to examine the Public Defender system with a weighted caseload study.

MAPA represents 115 elected prosecutors plus more than 200 assistant attorneys, elected and appointed, sworn to uphold justice and seek the truth. MAPA believes that sufficient empirical data is not available to corroborate the claim of a caseload crisis. MAPA further believes that if such a crisis exists, it is a crisis of the entire criminal justice system and not just one of the Public Defender system. It therefore logically requires an approach that considers issues with adjudication, prosecution, the effect on private defense attorneys and the Public Defender system. Prosecuting attorneys handle one hundred percent of criminal cases filed in the state of Missouri. That fact is indisputable. Public defenders handle a percentage of that amount. While the exact percentage may not be agreed upon by MAPA and the Public Defender Commission, it is indisputable that it is merely a percentage, not the sum. What exact percentage of cases are handled by the Public Defender system is in dispute. But, although that number is unknown, it is clear it is not the percentage previously thought and the percentage previously claimed. The counting system used by prosecutors is the same as that used by OSCA and is based upon filed, not opened, cases.¹

In addition to being premature, this bill makes unprecedented sweeping changes to the criminal justice system. It gives the Public Defender system unfettered discretion to first define and then create arbitrary caseload standards with no input from any other part of the criminal justice system and considering the solitary issue of what works best for the Public Defender system. It allows the public defender to create a waiting list for defendants without input from the courts. This process will slow down access to justice by crime victims, law enforcement, citizens and criminal defendants.

MAPA believes this legislation has possible constitutional challenges in the areas of speedy trials, victim's rights and unfunded mandates. It also forces prosecuting attorneys to decide at the onset of each case whether or not the State is seeking jail time in misdemeanor cases. Since often times at filing not all information has been obtained and frequently adequate time to make contact with a crime victim has not yet occurred, prosecuting attorneys will likely take the default position of requesting jail in all misdemeanor cases in order to preserve the option. The effect of this will be to increase potential public defender caseloads and further impede the movement of cases through the Associate Circuit Court system.

History of the Issue

In 2005, the Missouri Bar formed the Missouri Bar Public Defender Task Force.¹ This task force included ten attorneys in private practice, four public defenders or members of the Public Defender Commission, four legislators (two of whom were former assistant prosecutors), two assistant attorneys general, two employees of the Department of Corrections, one judge, one employee of the governor, one United States Attorney, one representative from Enterprise Rental Car company, and one elected prosecuting attorney.² This task force met for the first time in July of 2005.³

In 2006, then-president of the Missouri Bar, Doug Copeland, stated the Public Defender system was in crisis.⁴ He acknowledged the criminal justice system has three pillars (judges, prosecutors and public defenders), and stated the Public Defender system was the most "fragile" of the three.⁵ Mr. Copeland reasoned that public defenders have no "safety valve" when they become overloaded.⁶ Mr. Copeland stated prosecutors can simply choose not to prosecute certain crimes or plea bargain others to deal with their caseload. Mr. Copeland states courts can discharge and free a defendant if the speedy trial rule is invoked.⁷ Both statements indicate a misunderstanding of the roles of the court and prosecutors in the criminal justice system. Mr. Copeland's response to any overburdening on prosecutors or the courts was to hire more prosecutors and increase the number of courts.⁸

¹ www.mobar.org

² See appendix A for a complete list of the members of the Missouri Bar Public Defender Task Force.

³ The Spangenberg Report, pg. 1.

⁴ *Journal of the Missouri Bar, Jan-Feb, 2006.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

The Missouri Bar Foundation commissioned an analysis of the Public Defender system by the Spangenberg Group. The Spangenberg Group was contacted by the Missouri Bar in March of 2005.⁹ Robert Spangenberg met with the Missouri Bar Public Defender Task Force for the first time in July of 2005 and the Spangenberg Group issued its final report a mere three months later.¹⁰ In its report, the Spangenberg Group states they met with prosecutors as part of its methodology.¹¹ There is no indication with whom they met and what information, if any, was provided. The public defender provided it's own caseload data to the Spangenberg Group.¹²

Within the Spangenberg Report, it was cited that the Public Defender system has made various budget requests since FY 2002 relating to caseload standards.¹³ The report noted that there is not a "solid case weighting standard" for use by the Public Defender system.¹⁴

According to the Spangenberg Report, "[a] complete comparison of resources between the Public Defender and the prosecution cannot be performed as Missouri lacks comprehensive, reliable data on the resources of local prosecutors."¹⁵ The report indicated that it received information from the Missouri Attorney General's Office indicating no substantial disparity between beginning salaries of assistant attorneys general and public defenders.¹⁶ Further, it indicated that it received a survey from the Missouri Office of Prosecution Services (MOPS) regarding salaries of local prosecutors, but the survey was incomplete, although there is no mention of any effort on behalf of the Spangenberg Group to conduct its own survey.¹⁷

In 2006, the Missouri Senate formed the Senate Interim Committee on the Missouri State Public Defender Commission. In January 2007, the Senate Interim Committee issued its report. The Senate Interim Committee met three times.¹⁸ The first meeting consisted of testimony by Cathy Kelly, then-acting director of the Missouri State Public Defender System.¹⁹ Acting Director Kelly testified to a four-prong crisis: caseload, retention, management and office space.²⁰

The second meeting consisted of testimony by then-Missouri Bar President Doug Copeland, Judge Charles Atwell, three assistant public defenders, a former assistant public defender and a member of the Governor's Council on Disabilities.²¹ Also present for the purpose of answering questions of committee members was an assistant attorney general.²²

⁹ The Spangenberg Report, at 1.

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.* at 14.

¹⁴

¹⁵ *Id.* at 15.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Corrected Report of Senate Interim Committee on The Missouri State Public Defender System.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Nothing in the report indicates that any questions were asked of this attorney for the state.²³ No prosecutors were asked to be present or to offer testimony and none was received.

The third meeting consisted of testimony from a law professor, the president of The Spangenberg Group, who presented testimony on his report, a member of the public defender commission and an assistant public defender.²⁴ Again, no prosecutors were asked to be present or to offer testimony and none was received.

The Senate Interim Committee made recommendations that “the caseloads of public defenders be reduced, support staff be increased, the number of public defenders be increased, whether through FTE or contract counsel, along with the base salary of public defenders being increased and funding added through supplanting unconstitutional court costs and providing additional appropriations.”²⁵ In that same report it was stated, “The Missouri Public Defender system provides representation in approximately 80% of the criminal cases in the State”. It was the earlier mentioned discrepancy in using, “openings” versus, “filings” that led to this hugely inaccurate statement. It appears the actual percentage of representation provided by the Public Defender is less than 40%.

The Missouri Bar Foundation has commissioned a second study, this one to include a weighted caseload study. This study is under the auspices of the newly formed Spangenberg Project at the Center for Justice, Law and Society through George Mason University.

Signing of SB 37 is Premature without a Comprehensive, Independent Study

MAPA opposes key portions of SB 37 which seek to overhaul the criminal justice system without a thorough or balanced study of the system as a whole. The effect these changes will likely have on the system is both unknown and unstudied.

To make the broad, sweeping changes to the criminal justice system that is proposed by SB 37 is premature. The Spangenberg Report did not include a weighted caseload study. It was simply an overview of the Public Defender system, based largely on numbers provided by the Public Defender system not compared with existing data from other sources. A weighted caseload study will look at the type of cases that public defenders handle and assess the time necessary for that representation. The Spangenberg Report relied on data provided by the Public Defender Commission, which in turn based its analysis in part on an internal time study conducted by public defenders. This time study was based on time being kept by attorneys on a 15 minute incremental standard, which had the effect of significantly overstating the actual time spent and therefore the extent of the caseload “crisis”.

Additionally, MAPA has been able to compile statistics that rebut the statistics relied upon by the Public Defender system.²⁶ The Public Defender system claims that it “opened”

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ See appendix B.

43,827 cases in 2008.²⁷ The total number of criminal cases filed by prosecuting attorneys in 2008 was 345,269.²⁸ This breaks down to 44.03% of felony cases, 10.03% of misdemeanor cases and 3.67% of traffic cases.²⁹

Additionally, the MAPA survey rebuts the findings of The Spangenberg Report that claimed a wide disparity between the salaries of prosecutors and public defenders. The survey shows that in most instances the median salary of an assistant prosecuting attorney is lower than the median salary of an assistant public defender.³⁰

These disparities present enough reason for pause. While this survey is not complete, it provides enough information to show a troubling gap between the statistics relied upon by the Missouri Bar Public Defender Task Force, the Spangenberg Group and the Senate Interim Committee. Presumably, the legislature in passing SB 37, relied upon much of this same information. If there is a crisis, then doesn't it stand to reason that prosecutors are experiencing an even larger crisis based merely on caseloads? Mr. Copeland acknowledged that prosecutors and courts are also in crisis and the answer to those crises was more money.³¹ However, the focus of SB 37 is not on the system in its entirety, but only one facet. Treating that facet in the fashion proposed by SB37 will only further deepen the crisis.

MAPA has called for a comprehensive study by the Missouri Bar of the criminal justice system as a whole. Members of MAPA have met with the leadership of the Missouri Bar and leadership of the Public Defender system to express MAPA's concerns with SB 37 and ask for the time necessary to conduct this comprehensive independent study of the system in its entirety.

MAPA urges this study to include weighted caseload analysis of public defenders, prosecutors and private defense attorneys. It should include an accepted definition of an "open" case. The disparity in the numbers relied upon by the Public Defender system is caused by the working definition of "open." The Public Defender system counts a file as "open" each time they enter a case, resulting in the large discrepancy of caseload numbers. Prosecutors and OSCA refer to a case as "open" only once, when it is filed. If a defendant pleads guilty, is placed on probation and the prosecutor later files one or more motions to revoke the probation, it is counted as one case by the prosecutors and OSCA. The Public Defender also counts in its caseload numbers cases where they initially enter a case and then private counsel is later obtained and the public defender withdraws.

To sign this bill now is premature. The only way to assure the citizens of Missouri that their tax dollars are being spent in the most efficient use possible is to conduct a weighted study. The Spangenberg Group indicated that data regarding prosecuting attorneys was not available. This is wrong. It is available. It was simply not available from one source as was the Public Defender information. Prosecutors do not have a central appropriating authority in the General Assembly. There are 115 jurisdictions that can and should be surveyed as part of a

²⁷ State of Missouri Public Defender Commission Fiscal Year 2008 Annual Report.

²⁸ See appendix B.

²⁹ Id.

³⁰ See appendix B.

³¹ Journal of the Missouri Bar, Jan-Feb, 2006.

comprehensive study. The information gleaned from Attachment B shows the availability of Prosecutor information. It is simply more difficult to obtain and summarize.

The Spangenberg Report also included assumptions that prosecutors are adequately funded. In fact, MAPA's position is that the majority of prosecuting attorneys offices in Missouri are under-funded and under-staffed. Prosecutor's offices do not receive any money from the General Assembly. They are funded entirely by county revenue which varies widely within the state depending on the tax base in a given county. Caseloads of Prosecutors are, almost without exception, larger than their counterpart public defenders.

The Public Defender System Should Not Have Unfettered Discretion on its Own Caseload

Even more troubling than the idea of signing a piece of premature legislation is the idea of allowing the Public Defender system unfettered discretion to determine its own caseloads. The standards that SB 37 would allow the Public Defender system to create would be entirely arbitrary. The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to counsel. The Eighth Amendment guarantees defendants a speedy trial. Missouri's Constitution guarantees victims the right to a speedy disposition of their cases. SB 37 as written gives the public defender the right to determine how these rights will be provided to criminal defendants. Moreover, it allows the public defender the right to delay justice for a crime victim in contravention of Missouri's existing Crime Victims Bill of Rights.³²

Mr. Copeland stated prosecutors can control their own caseloads by deciding not to pursue prosecution of certain crimes.³³ Prosecutors are given wide discretion in the filing of charges. This is a power taken seriously by Missouri's elected prosecutors and their assistants. It is a power not to be abused neither in the filing of illegitimate charges, nor in the decision not to file legitimate charges merely to manage caseloads. Likewise, public defenders are also officers of the court. They too have a duty. But, it is a percentage of the duty that prosecutors have. It is indisputable that prosecutors handle 100% of criminal cases. While it is debatable the exact percentage of cases handled by the public defender, it is not debatable that it is merely a percentage of the total criminal cases.

Under this proposed legislation, it is conceivable that the Public Defender system can impose its own internal caseload standards, without respect to any empirical data.³⁴ There is no standard upon which to base the maximum caseload requirements. While the legislation allows for the Public Defender Commission and the Missouri Supreme Court to enact rules for the implementation of these standards, once again no empirical data is used for parameters.³⁵ This

³² Mo. Const. Art. 1, Sec. 32; Section 595.209 RSMo.

³³ Journal of the Missouri Bar, Jan-Feb 2006.

³⁴ In a previous internal survey by the public defender system, the system used minimum 15 minute increments as a base unit for time studies. This significantly distorts the actual time spent on cases in criminal practice.

³⁵ It is possible that the standards could include placing all probation violations at the bottom of the waiting list. Indeed, an assistant public defender offered testimony to the Senate Interim Committee that the elimination of representation in probation violation cases would help alleviate the overburdened workload. See Corr. Rep. of Sen. Int. Comm.

will have the effect of creating an unnecessary backlog of cases which will delay justice for crime victims and defendants at a time when real progress in moving cases is starting to occur.

The idea of a waiting list for justice is abhorrent to MAPA as ministers of justice. MAPA agrees that defendants should be entitled to speedy trials and should not have to wait unreasonable lengths for their days in courts. MAPA also agrees that crime victims are entitled to justice in a timely manner as well, and the length of time to achieve justice should not be conditioned on the type of offense committed against that victim. The victim of a misdemeanor domestic assault case or stealing case has as much right to timely justice as the defendant in a murder case or rape case.

Constitutional Concerns

This legislation may not survive constitutional challenges. Missouri “courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.”³⁶ This right to access to justice without denial or delay applies equally to defendants and victims.³⁷

Defendants have a constitutional right to a speedy trial.³⁸ Allowing the Public Defender system to impose arbitrary caseload standards and then placing defendants on waiting lists, has the potential to cause numerous defendants to invoke their right to speedy trial. This may have a crippling effect on the criminal justice system, forcing courts and prosecutors to take actions which could result in offenders not being held accountable and Missouri’s citizens being endangered.

SB 37 also purports to create another unfunded mandate. It would require prosecuting attorneys and law enforcement agencies to provide photographs, recordings and electronic files regarding criminal cases at no charge to the public defender upon request. These offices already must provide photocopies of reports to the public defender at no charge under existing law. This may well be an unfunded mandate to counties in violation of the Hancock Amendment. These new requirements would create a burden and increase costs to counties and prosecutor’s offices without providing necessary funding.

Jail Time Requirements

This bill would also require prosecuting attorneys to make a determination at the outset of a case regarding whether or not the state is seeking jail time. Additionally, a term of probation which is imposed by the court may not ultimately result in the ability of a court to impose a term of imprisonment. Both of these scenarios are detrimental to the criminal justice system.

SB 37 would require representation by the public defender for indigent persons when the prosecuting attorney has requested a jail sentence. The bill does not address at what stage in the case this determination must be made. Accordingly, prosecuting attorneys will be forced to

³⁶ Mo. Const. Art. 1, Sec. 14.

³⁷ Mo. Const. Art. 1, Sec. 32(5).

³⁸ Mo. Const. Art. 1, Sec. 18(a).

make this determination at the onset of a case, when a defendant's entire history may not be available to the prosecuting attorney. However, if a prosecuting attorney does not elect to pursue a jail sentence at the onset of a case, and later, while the case is pending, new information is gathered which would change the prosecuting attorney's recommendation, the state may be barred from seeking jail without beginning again the entire process. This would have the effect of delaying justice and crippling the criminal justice system by forcing prosecuting attorneys to dismiss and re-file cases simply to seek jail time.

Additionally, the bill creates a scenario of increased public defender representation. The language of the bill requires the public defender to represent an indigent person in a misdemeanor case in which the state has requested a jail sentence "and which will probably result in confinement in the county jail." This wording is troubling as it relates to probation violations. Public defenders currently represent indigent defendants on probation violations.³⁹ An individual could be placed on probation initially and unrepresented if the prosecuting attorney announces the state was not seeking jail time. If that person is subsequently placed on probation and later violates and is revoked, the state would normally be entitled to have that probation revoked and have a jail sentence imposed or executed. However, under this bill, a court may decide that it has no authority to impose or execute a jail sentence because the individual was not represented at the time of initial plea. This would have the effect of making probation meaningless, denying justice to crime victims and taking any teeth out of the criminal justice system. Prosecuting attorneys would of necessity start announcing the state is seeking jail time from the outset of every case, just to preserve the possibility of jail. This obviously would have the opposite effect from that intended and could actually increase caseloads.

Conclusion

MAPA urges Governor Jay Nixon to veto SB 37. The major studies performed to date, The Spangenberg Report and the Senate Interim Committee, have relied on data, in the form of statistics or testimony, which we now know is flawed. The Missouri Bar has pending a commissioned and weighted study that will correctly address these issues. Proceeding without the benefit of that study does not make sense. Implementation of the unstudied provisions of this bill that allows the public defender to first define and then determine caseloads is at best premature. At its worst, these provisions could cause irreparable short and long term damage to the administration of justice for crime victims and the citizens of Missouri. We would therefore, respectfully, ask Governor Nixon to veto SB 37.

³⁹ Once again, testimony to the Senate Interim Committee indicates that the public defender system views representation of probation violations as an area that causes excessive caseloads. See Corr. Rep. to Sen. Int. Comm.

APPENDIX A
Missouri Bar Public Defender Task Force

Rep. Rachel L. Bringer , Missouri House of Representatives

Honorable Rex M. Burlison , Missouri Attorney General's Office

Honorable Richard G. Callahan , Circuit Judge, Cole County

Morry S. Cole, Chair , Young Lawyers' Section Council

Senator Maida Coleman , Missouri Senate

Larry Crawford, Director , Department of Corrections

Deborah Daniels, Criminal Division , Attorney General's Office

Jane C. Drummond , General Counsel to the Governor

Charles Walter German, President-Elect , Kansas City Metropolitan Bar Assn.

C. Daniel Gibson, General Counsel , Department of Corrections

Teresa L. Grantham , Law Offices of Teresa Grantham LLC

Catherine L. Hanaway , U.S. Attorney

Charlie J. Harris, Jr. , Berkowitz Oliver Williams Shaw & Eisenbrandt LLP

Rep. Jim Lembke , Missouri House of Representatives

Miller M. Leonard, Public Defender Commission

Rep. Scott Alan Lipke , Missouri House of Representatives

Vanita R. Massey, President , Jackson County Bar Association

Pamela J. Meanes , Mound City Bar Association

Joseph S. Passanise, President , Missouri Association of Criminal Defense Attorneys

Renee Michele Reuter , Enterprise Rental Car Company

J. Marty Robinson , State Public Defender

Loramel P. Shurtleff, Public Defender Commission

Rebecca S. Stith, Public Defender Commission

Lynn Whaley Vogel, President-Elect , Bar Association of Metropolitan St. Louis

Robert G. Wilkins, President , Missouri Association of Prosecuting Attorneys

Eric J. Wulff , Burke Zerr Wulff & Briscoe, LLP

APPENDIX B

Comparison of Median Salaries and Cases for Assistant Prosecutors and Assistant Public Defenders for 2008

2008	Felony Cases Filed (Opened)	Misdemeanor Cases Filed (Opened)	Traffic Cases Filed (Opened)	Total Cases Filed (Excluding Probation Violation and Juvenile)	Felony Cases Closed	Misdemeanor Cases Closed	Traffic Cases Closed	Total Cases Closed (Excluding Probation Violation and Juvenile)
State	56537	131104	157628	345269	41984	131129	157831	199815
Public Defender	24893	13152	5782	43827	25020	13412	5751	44183
PD % of State Total	44.03%	10.03%	3.67%	12.69%	59.59%	10.23%	3.64%	22.11%

Note: The State numbers above were gathered by OSCA. The Public Defender numbers were taken from the "State of Missouri Public Defender Commission Fiscal Year 2008 Annual Report" dated October 1, 2008. Circuit Courts do not report probation violation cases as newly filed cases, so those numbers, as well as juvenile matters, have not been included in the Public Defender numbers above. Probation revocation and juvenile cases represent 26.91% of the Public Defender's opened cases, and 26.51% of its closed cases.

District	Median Assistant Prosecutor (APA) Salary	Median Assistant Public Defender (APD) Salary	% of APD Median Salary to APA Median Salary	Total Cases Filed by PA	Total Cases Opened by PD	% of Cases Represented by PD	Total Cases Disposed by PA	Total Cases Disposed by PD	% of Cases Disposed by PD		
District 2	\$53,045.00	\$47,676.00	0.90	2608	392	0.15	2695	415	0.15		
District 4		\$47,676.00		5390	420	0.08	5047	397	0.08		
District 5	\$55,854.00	\$47,676.00	0.85	4958	1505	0.30	4999	1614	0.32		
District 10	\$38,501.00	\$47,676.00	1.24	8539	1055	0.12	8493	1085	0.13		
District 13	\$56,067.00	\$47,676.00	0.85	8415	3269	0.39	9753	3317	0.34		
District 14	\$33,420.50	\$47,676.00	1.43	5965	1235	0.21	5722	1291	0.23		
District 15	\$53,251.00	\$47,676.00	0.90	12304	1314	0.11	12260	1366	0.11		
District 17	\$41,750.00	\$47,676.00	1.14	13811	1883	0.14	13526	1879	0.14		
District 20	\$34,174.50	\$47,676.00	1.40	9442	1119	0.12	9338	1083	0.12		
District 23	\$61,438.00	\$47,676.00	0.78	8882	3347	0.38	9305	1358	0.15		
District 24	\$31,250.00	\$47,676.00	1.53	12072	1813	0.15	11858	1673	0.14		
District 25	\$41,560.00	\$47,676.00	1.15	15568	2522	0.16	15890	2724	0.17		
District 26	\$57,000.00	\$47,676.00	0.84	6631	1259	0.19	6500	1243	0.19		
District 28		\$47,676.00		3902	983	0.25	3754	1006	0.27		
District 29	\$49,200.00	\$47,676.00	0.97	15702	2941	0.19	12957	2941	0.23		
District 30	\$50,000.00	\$47,676.00	0.95	12662	1121	0.09	12198	1130	0.09		
District 32	\$42,000.00	\$47,676.00	1.14	9365	2196	0.23	8359	2137	0.26		
District 34	\$40,805.00	\$47,676.00	1.17	6333	817	0.13	5952	809	0.14		
District 35	\$46,000.00	\$47,676.00	1.04	6025	1121	0.19	5405	1071	0.20		
District 36	\$44,493.50	\$47,676.00	1.07	7356	1364	0.19	6948	1347	0.19		
District 37	\$43,581.00	\$47,676.00	1.09	7297	905	0.12	6386	980	0.15		
District 39	\$43,950.00	\$47,676.00	1.08	8708	1406	0.16	7679	1479	0.19		
District 43		\$47,676.00		15114	1933	0.13	14630	2041	0.14		
District 44	\$12,000.00	\$47,676.00	3.97	4585	663	0.14	4436	470	0.11		
District 45	\$47,100.00	\$47,676.00	1.01	6164	1012	0.16	5700	1047	0.18		
				Totals							
Median APA Salary				\$44,222.00	\$47,676.00	1.08	217798	37595	209790	35904	0.17

Note: The table below shows the median assistant prosecuting and assistant public defender salaries computed from the salary lists in the previous table.

Note: The Districts listed above are those Districts for which we were able to obtain information regarding assistant prosecutors and salaries. The total cases filed and closed by prosecutors was obtained from OSCA's 2008 Statistical data for each county. The number of cases opened and closed by the Public Defender's Office was taken from the breakdown by county in the "Fiscal Year 2008 Annual Report." The number of open cases reported by the PD was adjusted by 26.91% and the number of closed cases was adjusted by 26.51% to allow for the probation violation and juvenile cases as noted above.

APPENDIX C
Summary of Changes in SB 37 and MAPA's position

- The bill purports to allow the Public Defender Commission to establish caseload standards. **MAPA opposes these changes.**
- The bill purports to give the director of the Public Defender system the authority to direct the legal defense provided by a public defender for the purpose of ensuring that ethical and constitutional obligations to provide effective assistance of counsel are met. **MAPA opposes these changes.**
- The bill purports to give the director of the Public Defender system the power to ensure the public defender caseloads remain within the maximum public defender caseload standards established by the commission, and allows for the director to contract excess cases to private counsel, and allows the director to notify the court that the public defender is unavailable and place such defendants on a waiting list. **MAPA opposes these changes.**
- The bill purports to create a process by which a defendant is placed on a waiting list, the court consults with the prosecuting attorney regarding disposition, determines an order for the waiting list, allows the commission and supreme court to promulgate rules and regulations regarding this process, and allowing the court to appoint private counsel. **MAPA opposes these changes.**
- The bill purports to require prosecutor's offices and police agencies to provide photographs, recordings or electronic files to the Public Defender system at no cost. **MAPA opposes these changes.**
- The bill purports to require the public defender to represent an indigent person in cases in which the prosecuting attorney has requested a jail sentence. **MAPA opposes this change.**
- The bill makes changes to the definitions of certain public defender employees. *MAPA has no opposition to these changes.*
- The bill makes a changes relating to the number of people who serve on the Public Defender Commission, their requirements, salaries and employment issues. *MAPA has no opposition to these changes.*
- The bill makes changes to the masculine and feminine references of actors. *MAPA has no opposition to these changes.*
- The bill makes changes relating to duties assigned to various employees of the Public Defender system. *MAPA has no opposition to these changes.*
- The bill makes changes requiring the state to pay parking costs for Public Defender system employees. *MAPA has no opposition to these changes.*
- The bill purports to require the public defender to provide representation to those people who are entitled to appointment of counsel under the federal or state constitution. *MAPA has no opposition to these changes.*
- The bill makes changes relating to the amount of unexpended balances in the legal defense and defender fund. *MAPA has no opposition to these changes.*